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**SCULLY, SCOTT, MURPHY
& PRESSER**

Fax

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To: Attention: Refunds
U.S. Patent and Trademark Office

From: Anna Eberle for Thomas Spinelli

Fax: 571-273-6500

Pages: 10

Phones:

Date: 3/6/2006

Re: USSN: 10/084,557
Filed: February 26, 2002
Our Docket: 15226

CC:

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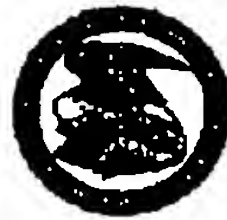
• **Comments:**

Deposit Account 19-1013 was erroneously charged \$390.00 in November of 2005 for extension of time fees. A response to the Final Office Action dated May 16, 2005 was filed on July 14, 2005, within two months of the date of the final. The Advisory Action was dated October 19, 2005, three months after the filing of the 116 Amendment. In a telephone interview with the Examiner, the Examiner agreed that since he did not timely reply to the 116 Amendment, under the rules only a one month Petition for Extension of time was due. Hence, the deposit account should only have been charged \$620.00—\$500.00 for the Notice of Appeal fee and \$120.00 for the Extension of Time fee, and not the additional \$390.00. A copy of the postcard receipt of the 116 Amendment, the Advisory Action and the Combined Notice of Appeal and Extension of Time are enclosed, together with the deposit account statement. Please credit the deposit account with the \$390.00. Thank you.

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Deposit Account Statement

Requested Statement Month: November 2005
Deposit Account Number: 191013
Name: SCULLY, SCOTT, MURPHY & PRESSER
Attention: LINDA ANN HAGEMEYER
Address: A PROFESSIONAL CORPORATION
City: GARDEN CITY
State: NY
Zip: 11530-0289
Country: UNITED STATES OF AMERICA

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
11/01	51	09722984	14098	8001	\$3.00	\$21,450.88
11/01	127	10112134	TUC920020001	1251	\$120.00	\$21,330.88
11/01	1407	78272673	1732/1002	7004	\$150.00	\$21,180.88
11/02	41	78272285	1732/1002	7004	\$150.00	\$21,030.88
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11/03	16	10437635	16590	1252	-\$450.00	\$21,300.88
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11/17	10	11164269		2111	\$250.00	\$15,461.88

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11/17 1610	78755987	1868/1001	7007	\$275.00	\$14,526.88
11/18 15	E-REPLENISHMENT		9203	-\$10,000.00	\$24,526.88
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11/22 63	11164393	18663	1202	\$900.00	\$22,906.88
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11/28 20	10517288		1642	\$400.00	\$20,438.88
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11/28 55	PCT/US05/41735	18874/18432	1602	\$1,000.00	\$19,138.88
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11/29 58	10418421	13245Z	2401	\$250.00	\$17,127.88
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START
BALANCE
\$21,453.88

SUM OF
CHARGES
\$16,158.00

SUM OF
REPLENISH
BALANCE
\$11,270.00 \$16,567.88

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PATENT OFFICE DATE STAMP WILL ACKNOWLEDGE RECEIPT OF:

1. Amendment Transmittal Letter (in duplicate)
2. Response under 37 C.F.R. §1.116
3. Certificate of Mailing dated 7/14/05

Applicant: Minoru Tsuruta

Serial No.: 10/084,557

Filed: February 26, 2002

For: MEDICAL RETRIEVAL INSTRUMENT

Docket: 15226

Dated: July 14, 2005

TS:dg

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1287

PATENT OFFICE DATE STAMP WILL ACKNOWLEDGE RECEIPT OF:

1. Amendment Transmittal Letter (in duplicate)
2. Response under 37 C.F.R. §1.116
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Applicant: Minoru Tsuruta

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,557	02/26/2002	Minoru Tsunata	15226	7971

7590 10/19/2005

Paul J. Esatto, Jr.
Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, NY 11530

EXAMINER

SAM, CHARLES H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/084,557	Applicant(s) TSURUTA, MINORU	
	Examiner Charles H. Sam	Art Unit 3731	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 22 and 31.

Claim(s) objected to: _____.

Claim(s) rejected: 36-39.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Continuation Sheet (PTOL-303)

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Application No.

Continuation of 11. does NOT place the application in condition for allowance because: Claims 36-39 have not been cancelled and claims 36-38 still read on Cope et al. (5,064,428) and claim 39 is still rejected based on the applicant's arguments.


ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXA:

10/17/5

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To: Examiner Charles H. Sam
Art Unit: 3731

From: Paul J. Esatto, Jr.
Registration No.: 30,749

Fax: (571) 273-8300

Pages: 5 (including cover sheet)

Phone:

Date: November 16, 2005

Re: USSN: 10/084,557
Minoru Tsuruta
Our Docket: 15226

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Acknowledge

The following is being facsimile transmitted to the U.S. Patent and Trademark Office on November 16, 2005:

1. Combined Notice of Appeal from the Primary Examiner to the Board of Patent Appeals and Interferences & Petition for Extension of Time Under 37 C.F.R. § 1.136(a) in Dupl.
2. Authorization to Charge Dep. Account 19-1013/SSMP for \$620.00
3. Certificate of Facsimile

Applicant: Minoru Tsuruta
Serial No.: 10/084,557
For: MEDICAL RETRIEVAL INSTRUMENT
Filed: February 26, 2002
Docket: 15226
Dated: November 16, 2005
PJE:cm

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COMBINED NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. 1.136(a) (Large Entity)					Docket No. 15226	
In Re Application Of: Minoru Tsuruta						
Application No. 10/084,557	Filing Date February 26, 2002	Examiner Charles H. Sam	Customer No. 23389	Group Art Unit 3731	Confirmation No. 7971	
Invention: MEDICAL RETRIEVAL INSTRUMENT						
<u>COMMISSIONER FOR PATENTS:</u>						
This is a combined Notice of Appeal from the Primary Examiner to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of <u>5/16/2005</u> <small>Date</small> in the above-identified application.						
Applicant(s) hereby appeal(s) to the Board of Patent Appeals and Interferences from the decision of the Primary Examiner dated <u>5/16/05</u> finally rejecting Claim(s) 36-39						
Applicant(s) hereby request(s) an extension of time of (check desired time period): <input checked="" type="checkbox"/> One month <input type="checkbox"/> Two months <input type="checkbox"/> Three months <input type="checkbox"/> Four months <input type="checkbox"/> Five months						
from: <u>10/19/2005</u> <small>Date</small> until: <u>11/19/2005 **see next page**</u> <small>Date</small>						
The fee for the Notice of Appeal and Extension of Time has been calculated as shown below:						
Fee for Notice of Appeal: <u>\$500.00</u>						
Fee for Extension of Time: <u>\$120.00</u>						
TOTAL FEE FOR NOTICE OF APPEAL AND EXTENSION OF TIME: <u>\$620.00</u>						
The fee for the Notice of Appeal and extension of time is to be paid as follows:						
<input type="checkbox"/> A check in the amount of _____ for the Notice of Appeal and extension of time is enclosed.						
<input checked="" type="checkbox"/> Please charge Deposit Account No. <u>19-1013/SSMP</u> in the amount of <u>\$620.00</u>						
<input checked="" type="checkbox"/> The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. <u>19-1013/SSMP</u>						
<input checked="" type="checkbox"/> Any additional filing fees required under 37 C.F.R. 1.16.						
<input checked="" type="checkbox"/> Any patent application processing fees under 37 CFR 1.17.						
<input checked="" type="checkbox"/> If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. <u>19-1013/SSMP</u>						
<input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.						
WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.						

P29LARGE/REV06

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**COMBINED NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO THE
BOARD OF PATENT APPEALS AND INTERFERENCES & PETITION FOR
EXTENSION OF TIME UNDER 37 C.F.R. 1.136(a) (Large Entity)**Docket No.
15226

In Re Application Of: Minoru Tsuruta

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/084,557	February 26, 2002	Charles H. Sam	23389	3731	7971

Invention: MEDICAL RETRIEVAL INSTRUMENT

TO THE COMMISSIONER FOR PATENTS:

This combined Notice of Appeal from the Primary Examiner to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:



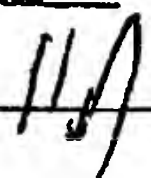
Signature

Dated: November 16, 2005

Paul J. Esatto, Jr.
Registration No.: 30,749

****Pursuant to a telephone interview with Supervisory Examiner Nguyen on 11/15/05 only a one-month extension of time is required as a Response to Final was filed within two-months.****

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